

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

March 9, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

HAWAII

Mutual Cancellation of General Lease No. S-5670, Big Island Farmers Market, LLC, for Aquaculture Purposes, North Kohala, Hawaii, Tax Map Key: 3rd/5-5-07:05.

APPLICANT:

Big Island Farmers Market, LLC, a domestic limited liability company, whose mailing address is 64-5245 Hauhoa Place, Kamuela, Hawaii 96743.

LEGAL REFERENCE:

Section 171-6, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands Hualua Government Track, Section D, North Kohala, Hawaii, identified by Tax Map Key: 3rd/5-5-07:05, as shown on the attached map labeled Exhibit A.

AREA:

40.57 acres, more or less.

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	20-acre agriculture (Ag-20)

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Encumbered by General Lease No. S-5670, Big Island Farmers Market, LLC, Lessee, for aquaculture purposes. Lease to expire on September 30, 2035.

Original term of 30 years, commencing on October 1, 2005 and expiring on September 30, 2035.

There are no rental reopenings.

ANNUAL RENT:

\$7,400.00 per annum

REMARKS:

At its meeting of January 25, 2002, under agenda item D-16, the Board approved the direct lease to Hawi Agricultural and Energy Corporation and Tropical Ponds Hawaii, LLC for the purpose of establishing an aquaculture operation.

Further, at its meeting of February 14, 2003 under agenda item D-3, the Board amended its prior action of January 25, 2002 (item D-16) by amending the name on the lease by removing Hawi Agricultural and Energy Corporation and naming Tropical Ponds Hawaii, LLC as the sole Lessee.

Due to several delays in finalizing the lease document, the effective date of the lease was October 1, 2005. By this time the Lessee was having a difficult time commuting from his existing aquaculture operations in the lower Puna district to the proposed North Kohala operation. As a result, it was felt they could no longer manage both sites and requested an assignment of the lease. At its meeting of March 10, 2006, under agenda item D-3, the Board consented to the assignment of lease from Tropical Ponds Hawaii, LLC, Assignor to Big Island Farmers Market, LLC, Assignee.

In a letter dated February 12, 2007 (Exhibit B), the Lessee explained that as a result of damage from the earthquake of October 15, 2006 and the subsequent failure of the Kohala ditch, their sole source of water for the aquaculture operation, they are no longer able to proceed with their business venture.

The Lessee also indicated in their letter the difficulty and expense of obtaining the necessary access permit and subsequent construction of a driveway to the lease land from the Highway. As a result, they were not able to initiate improvements to the property. An inspection of the property by staff confirms the lack of improvements to the lease land. Because the land was never utilized, staff is requesting the Board waive the Phase I Hazardous Waste Evaluation requirement (par.51, Exhibit C).

Staff has reviewed the lease account. The Lessee is current with rent and liability insurance. A cash bond equal to twice the annual rent is in place. There is no outstanding rent reopening issues.

Staff is recommending the Board authorize the mutual cancellation of General Lease No. S-5670, Big Island Farmers Market, LLC, Lessee.

RECOMMENDATION: That the Board:

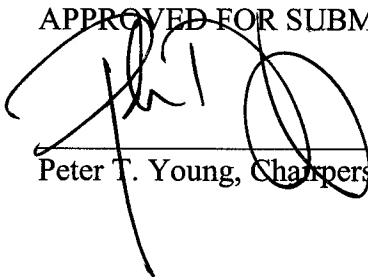
1. Authorize the mutual cancellation of General Lease No. S-5670, Big Island Farmers Market, LLC, Lessee, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current mutual cancellation lease document form, as may be amended from time to time;
 - B. Waive the Phase I Hazardous Waste Evaluation requirement (par.51);
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

 Respectfully Submitted,



Gordon C. Heit
Land Agent

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

[illegible]

Parcels Dropped: 1, 3, 4, , 16,

THIRD DIVISION
ZONE SEC. PLAT
5 5 07
CONTAINING 16 PARCELS
SCALE: 1 in. = 400 ft.

To : State of Hawaii
Department of Land and Natural resources
Land Division
75 Aupuni Street Room 204
Hilo, Hawaii 96720
(808)974-6203

Feb 12, 2007

From : Big Island Farmers Market, LLC
64-5245 Hauhoa Place
Kamuela, Hawaii 96743
(808)885-7606

Subject: General Lease No. S-5670
Hualua, North Kohala, Hawaii
Tax Map Key 3rd/5-5-07:05

RECEIVED
LAND DIVISION
HONOLULU, HAWAII

2007 FEB 12 A 1:03

Dear Mr. Gordon Heit

Big Island Farmers Market, LLC has regretfully decided to surrender the above mentioned lease to State of Hawaii due to the following reasons:

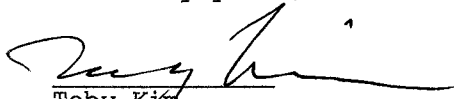
- 1) There is no water available for aquatic farm operations after the earthquake on Oct 15, 2006. Surety Corporation, who owns and manages North Kohala ditch systems has no funds nor plans to fix them in a near future.
- 2) Making drive way to the property is too difficult and costly. We hired an engineer to meet the requirements of the Department of Transportation and after 6 months, we still could not get a permit to build a driveway to get into the property.

Therefore, we, Big Island Farmers Market, LLC, would like to surrender the lease to State of Hawaii.

Should you have any question, please feel free to contact me at 885-7606 or 987-1001. We are very sorry that it did not work out and appreciate it we can get our deposit back soon.

Aloha

Sincerely yours,

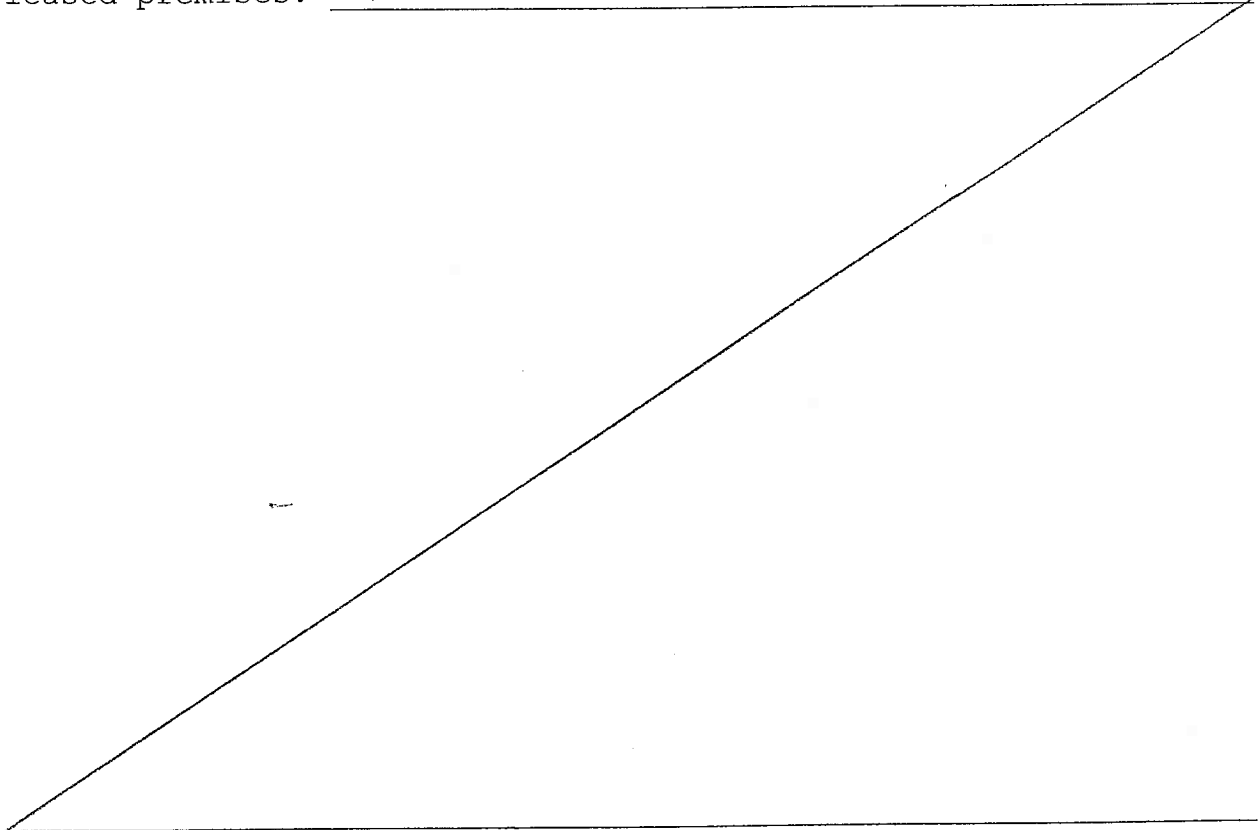

Toby Kim
General Manager

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

50. Removal of trash. The Lessee shall be responsible for the removal of all illegally dumped trash upon the premises within ninety (90) days from the date of execution of the lease and shall so notify the Lessor in writing at the end of ninety (90) days.

51. Phase one (1) hazardous waste evaluation. Prior to the termination of this lease or the assignment of the leasehold, Lessee shall conduct a Phase One (1) Hazardous Waste Evaluation and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency and the Department of Land and Natural Resources. Any assignment or voluntary termination by the Lessee will not be approved by the Board of Land and Natural Resources unless this evaluation and abatement provision has been executed. This provision shall survive and continue in effect after termination of this lease.

52. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.



PHOTOGRAPHS OF SUBJECT PROPERTY
Hawi, Island of Hawaii, Hawaii



Westerly view along Akoni Pule Highway. Subject property is to the right.



Northerly view along the eastern boundary of the subject property. The subject property is to the left of the fence.

PHOTOGRAPHS OF SUBJECT PROPERTY
Hawi, Island of Hawaii, Hawaii



Southerly view of the subject property from the northern end of the parcel.



Northerly view from the northern end of the parcel.